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July 1, 1999

Ms. Sherri Estes  
U.S. EPA  
Mail Code C-14J  
77 West Jackson  
Chicago, IL 60604

TRANSMISSION BY FACSIMILE  
AND ORDINARY MAIL

Re: Skinner Landfill ADR  
Bushelman Trust and John F. Bushelman Const., Inc.  
JFB, Inc.  
Settlement Considerations

Dear Ms. Estes:

I. Suggested Exposure to Bushelman Entities:

(A) Final Allocation Recommendation of Allocator  
(See 6/21/99 confidential submission)

(1) .20% as a transporter

(2) 1% as an "operator"

1.19710% assigned liability x \$15 million =  
\$179,565.00.

(B) Date of suggested liability for purpose determining  
voidable distributions as "transfers in fraud of  
creditors":

(1) 10/6/98 - Date of Preliminary Allocation Report  
and Recommendations of Allocator

(2) 4/12/99 - Date of Final Allocation Report and  
Recommendations of Allocator

II. Assets available to Bushelman entities:

(A) JFB, Inc., formerly known as John F. Bushelman Con-  
struction, Inc., is an inactive corporation with  
essentially one (1) asset, although a second note  
and Remediation Agreement exists to determine ob-  
ligations between the corporation and the Trustee.

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(1) Promissory Note from Kossen, Inc. dated 9/6/95 payable to John F. Bushelman Construction, Inc. in the face amount of \$100,000.00, payable in monthly installments of \$2,027.64 thru 9/1/2000. Balance after 6/1/99 installment is \$28,852.18.

(2) Demand Note from Tracy Ann Engel, Trustee in the original amount of \$116,231.31 dated as of 9/6/95, which is reduced from time to time by advancements made by Trustee to pay extensive environmental remediation under following agreement, and which Demand Note is increased for systematic borrowing of \$2,027.64 monthly payments by Trustee for day-to-day operations of Trust.

(3) Escrow Agreement for Environmental Remediation Work between JFB, Inc. (as Obligor) and Tracy Ann Engel, Trustee (as Owner) which provides for final financial responsibility for environmental clean-up to be the corporation's obligation with full accounting made at conclusion of remediation.

(B) John F. Bushelman Revocable Trust under April 4, 1995 Trust Agreement with Tracy Ann Engel, Trustee.

(Note that John F. Bushelman died on 5/8/95, a resident of Florida, with his surviving spouse, Julia Bushelman, succeeding to Florida residence and certain other miscellaneous assets held in survivorship with spouse or transferred to her during her lifetime (See U.S. Estate Tax Return Form 706)).

(1) Trustee was transferred all of John Bushelman's "Ohio Assets", deemed to be non-marital and pre-marital assets consisting of only Cincinnati real estate and 100 shares of John F. Bushelman Construction, Inc., which corporation was then subject to Contract for Sale of All Assets between John F. Bushelman Construction, Inc. and Kossen, Inc.

(2) Trust Agreement provided for required payment of all secured obligations of John F. Bushelman, all lifetime tax obligations and medical and other debts incurred by Bushelman during his lifetime, exclusive of Florida marital residence mortgage.

(3) Ultimate beneficiaries of Trust are John F. Bushelman's five (5) children, Peggie Ruth, Patty Ertel, John T. (Terry) Bushelman, Janice M. Bushelman and Tracy Ann Engel, with permissive sprinkling of distribution to Julie Bushelman, spouse, if necessary for support.

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(4) Distributions from Trust to beneficiaries:

|                     |   |                  |
|---------------------|---|------------------|
| Peggie Ruth         | - | \$16,779.05      |
| Patty Ertel         | - | 16,279.05        |
| John T. Bushelman   | - | 23,702.32        |
| Janice M. Bushelman | - | 20,612.43        |
| Tracy Ann Engel     | - | <u>14,557.44</u> |

Total Distributions                      \$91,930.29

Note that only distributions made after 10/6/98 Preliminary Allocation Report of Allocator when Trustee was put on notice that other than de minimus liability was possible were as follows:

|          |   |                   |   |            |
|----------|---|-------------------|---|------------|
| 11/19/98 | - | Tracy Ann Engel   | - | \$1,200.00 |
| 11/20/98 | - | John T. Bushelman | - | 200.00     |
| 12/14/98 | - | Tracy Ann Engel   | - | 100.00     |

(5) Assets owed by Trust:

(a) Real estate at 11980 Runyan Drive, Sharonville, Ohio - industrial site with contamination being remediated

|                     |   |              |
|---------------------|---|--------------|
| Value as Greenfield | - | \$250,000.00 |
| Value as Brownfield | - | UNKNOWN      |

Rental income:                              \$3,100.00 per month

- \$3,000.00/month from Kossen, Inc. paid to Co-Trustees of Environmental Escrow
- \$100.00 from James Morgan paid to Tracy Engel, Trustee

(b) Real estate at 3736 Hauck Road, Sharonville, Ohio - single-family residence - same contamination

|                         |   |             |
|-------------------------|---|-------------|
| Value as a "Greenfield" | - | \$36,000.00 |
| Value as a "Brownfield" | - | UNKNOWN     |

Rental income:                              \$200.00/month paid by Robert Lindeman to Tracy Engel, Trustee

(c) Fifth Third Bank Account  
Environmental Escrow held by C. Gregory Schmidt and G. Robert Hines, Co-Escrow Agents  
Assuming June rent payment  
6/30/99 Balance                              \$35,521.59

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Total rent payments made by Kossen, Inc. to Co-Escrow  
Agents 10/95 thru 6/99 = 45 months @ \$3,000.00  
Total rentals received: \$135,000.00  
Total interest income : \$ 2,570.79  
Total payments to SRW : \$ 96,907.62  
Balance of Escrow : \$ 35,521.79

(d) First National Bank of Southwestern Ohio  
Trustee's Checking Account  
Assuming June note payment of \$2,027.64  
from Kossen, Inc. to JFB, Inc.  
borrowed by Trustee for cash flow  
under Note payable  
6/30/99 Balance \$2,500.00

(6) Environmental remediation expenditures:

(a) Total expenditures to date: \$154,000.00

- Paid by Environmental Escrow at Fifth  
Third Bank funded by Kossen, Inc.  
rents: \$ 96,907.62
- Paid directly by Tracy Engel: \$ 59,000.00
- \$16,000.00 paid to Environmental Enterprises,  
Inc. for Phase I and II audits and State of  
Ohio tank removal registration and removal  
permit fees
- \$25,000.00 to MVM for 12/31/95 underground  
tank removal
- \$107,792.55 paid to SRW Environmental Ser-  
vices
- \$11,000.00 for other miscellaneous expendi-  
tures to date

(b) 11/13/98 Remedial Action Plan Cost

Estimate of SRW Environmental Services, Inc.

|   |                  |
|---|------------------|
| ( i) Installation Phase                     | \$107,150.00     |
| (ii) Follow-up Evaluation<br>and Monitoring | <u>23,400.00</u> |

Total RAP Construction (Estimate) \$130,550.00

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Michael D. Weinstein, P.G., C.P., Vice-President of SRW, is now of the opinion that extent of ORC injection and removal level proposed is insufficient and costs of remediation and monitoring could ultimately double to \$260,000.00 of which only \$50,000.00, more or less, has been received toward remediation.

(c) Plan envisions remediation of known water table contamination of petroleum hydrocarbons within soil, affecting groundwater to acceptable level to obtain "no further action" letter from BUSTR (Bureau of Under ground Storage Tank Regulation). This is not necessarily a return to a greenfield condition.

### III. Issues Affecting Structure of Settlement

Real estate cannot be said sold unless and until fully remediated to a "greenfield" condition. Presently a "brownfield" -- generally accepted to be "vacant or under-utilized real estate, or real estate whose saleability is the result of an actual or perceived environmental contamination.

Because of the environmental condition of the property, even when remediated to a level required by Ohio's Bureau of Underground Storage Tank Regulations and the Ohio EPA and Sharonville officials, the market value will continue to suffer a diminution of value from that of neighboring "greenfields" as a result of subsequent users' (or sellers') lack of protection from future environmental liability. There is no assurance that State or Federal regulatory agencies might return and demand additional clean-up activities. Obtaining a covenant not to sue from Ohio EPA under Ohio's Voluntary Action Program may allow only a lesser, restricted use.

Conclusion: Market value cannot be determined with any certainty; property cannot be used for collateral for loan to be obtained to fund settlement; and property cannot be sold until fully remediated and monitored for a sufficient time.

### IV. Proposal for Structuring Settlement

(A) Cash income from Kossen, Inc. rental of \$3,000.00/month continue to Environmental Escrow to fund remediation.

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(B) Cash income from Kossen, Inc. Promissory Note of \$2,027.64 and smaller rents (\$300.00) continue to Trustee for payment of all income tax and real estate tax liabilities of corporation and Trust and administrative expenses (insurance, legal, miscellaneous expenses of Trustee).

(C) Covenant that no further trust distributions be made to beneficiaries.

(D) Covenant that no recovery be attempted for Pre-Allocation Report distributions to beneficiaries (distributions made through 1998).

(E) Cash settlement formula be pursued on a "percentage-of-sale proceeds" basis (example: 35% of net sale proceeds to EPA Trustee and 65% to Trust), with a minimum and maximum cap to EPA's participation. Sale to be pursued within agreed-upon post-remediation period (example - 1 year from receipt of "no further action" letter from Ohio Attorney General or Ohio BUSTR).

Please find the enclosed informal records submitted by Trustee:

1995 - Trial Balance  
1996 - Trial Balance  
1997 - Trial Balance  
1998 - Check Register  
1998 - Deposit Summary

Respectfully submitted,

*G. Robert Hines*

G. Robert Hines

GRH/kf  
encs.

*Skinner Landfill Superfund Site*

## **Final Allocation Report and Recommendations**

**John M. Barkett  
Allocator**

**April 12, 1999**

## Owner and Operator Shares

The Preliminary Report recounted the history of the Skinner Landfill and recommended the assignment of a share of 50% to [REDACTED] and 10% to Elsa and Ray Skinner, and reserved judgment on the operator share of John F. Bushelman Construction, Inc. (Bushelman).

There were some substantive comments on the owner/operator shares from several parties.

King Wrecking cited City of Seattle v. Amalgamated Servs., 1994 WL 869839 (W.D. Wash. 1994), and Barnes Landfill, Inc. v. Town of Highland, 802 F. Supp. 1087 (S.D.N.Y. 1992), in arguing that it should not be liable for response costs because the Skinners would be legally obligated under state law to carry out a proper landfill closure and cap. At the very least, it argued, citing Town of New Windsor v. Tesa Tuck, Inc., 919 F. Supp. 662, 669-71 (S.D.N.Y. 1996), the Skinners' legal obligation should be taken into account as an equitable factor in the allocation process. Therefore, King Wrecking concluded, the non-owner/operator PRPs should only be responsible for the difference between the cost of a normal landfill cap and the RCRA cap required by the EPA Records of Decision.

Henkel suggested that it may be premature to assign the liability of Albert and John Skinner to the orphan share category. Henkel believes that first some investigation into the assets of their estates is required. Henkel also noted that the Preliminary Report refers to an unknown tenant of the Skinners who accepted industrial wastes some time prior to the 1963 State of Ohio litigation (pointing out that the Preliminary Report called this tenant a "lessor" instead of a "lessee." It said that efforts should be made to identify this tenant before characterizing the owner/operator share as an orphan.

[REDACTED] also argued (see below) that a significant portion of the [REDACTED] share be reassigned to the solid waste sources.

I know of no way to identify the missing tenant. [REDACTED] and [REDACTED] are dead and have been for over a decade. I do not know the status of their estates but I would be shocked if they are not long closed (if a probate court filing was ever made). I am not certain how Ohio landfill laws apply to the facts of this case. [REDACTED] did not support its argument with a discussion of the Ohio statutes that may be applicable here.

**Analysis.** On the assumption that the shares of [REDACTED] and [REDACTED] represent an orphan share, and that all parties cooperate in the implementation of the remedy, I am for purposes of this Final Report, reassigning 49% of the share of [REDACTED] and [REDACTED] to [REDACTED] and [REDACTED] and 1% to John F. Bushelman Construction, Inc. (or its successor in interest).

Given the choices here, equity dictates that the [REDACTED] keep the lion's share of the allocation for their landfill. [REDACTED] was involved with the administrative aspects of the Landfill for over thirty years. She was responsible for the record keeping but failed to



maintain adequate or complete records. She benefitted from the revenues derived from the Landfill. She knew or should have known about the waste lagoon and the receipt of chemical wastes. As noted below in the reallocation of the Chem-Dyne share, she had knowledge of strange happenings at night at the Landfill and, whether as a result of disinterest or loss of memory, apparently never followed up. [REDACTED] knew of the use of the lagoon and disposal of waste by Chem-Dyne at the Skinner Site, according to his testimony. Preliminary Report, p. 63. [REDACTED] was involved in the Landfill's activities when the lagoon was closed. [REDACTED] could not have ignored the flap over the lagoon following the fire since there was significant local publicity and subsequent litigation. Nor was she a stranger to litigation having been involved in the suit with Butler County in the 1960s. The lagoon and the rest of the Landfill have also been covered by tremendous sums of debris brought to the Landfill in the 1980s (see Preliminary Report, p. 82) while [REDACTED] operated the Landfill for his mother. Most of this waste was added after the NPL listing. The addition of all of this waste effectively eliminated the ability of probably all of the parties to develop evidence supporting their "lack of nexus" arguments and added to the costs of the Landfill cap. In addition, [REDACTED] alone benefitted from the continued operation of the Landfill, and presumably have received whatever assets belonged to [REDACTED]. From the standpoint of knowledge, involvement, care, benefit and fault, they deserve the highest share as owner/operators and because they stand in the shoes of, equitably if not legally, [REDACTED]. While I recognize that, at the margin (probably 5-15%) and even in the absence of arguments over cooperation, some of this share might be reallocated to the other parties here if this matter were tried, and while I realize that economic resources could affect the district court's allocation, on the facts before me, I am comfortable that this reallocation is a reasonable one for these reasons.

I have also considered further the Bushelman share and have decided that 1% is appropriate for his conduct in covering the lagoon. The accessibility to the lagoon might have -- and I emphasize *might* -- changed the course of this Site. His role in rendering it inaccessible, especially in the face of publicity and the Ohio EPA's involvement in the matter, cannot be ignored and warrants a separate operator share.

Hence, with the qualifications stated above and on the unique facts of this case, it is my recommendation that, as owners and operators, [REDACTED] be assigned 59% and Bushelman 1% of Site costs.

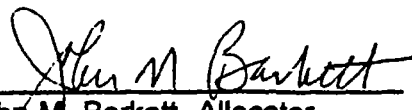
## Conclusion

Based on my analysis of the evidence, and taking into account the totality of the circumstances, and reallocating orphan shares as set forth above, it is my recommendation in this Final Report that the allocation of response costs for the Skinner Site be apportioned as follows:

|  |     |
|--|-----|
| [REDACTED]   | 67% |
| John F. Bushelman Construction Co.                                     | 1%  |
| Chem-Dyne Related Parties<br>(As Identified in the Body of the Report) | 1%  |
| [REDACTED]   | 1%  |
| Arrangers and Transporters - Liquid Wastes                             | 20% |
| Arrangers and Transporters - Solid Wastes                              | 10% |

Revised appendices 2 and 3 reflect individual waste-in amounts and show percentages for all parties. A separate document is attached that discusses the orphan shares at this Site with supporting exhibits.

Respectfully Submitted,

  
\_\_\_\_\_  
John M. Barkett, Allocator  
April 12, 1999

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

|               | Solid    | Liquid   | Solid Waste |            | Liquid Waste |            |       |        |           |         |       |
|---------------|----------|----------|-------------|------------|--------------|------------|-------|--------|-----------|---------|-------|
|               | Waste In | Waste In | In Total    | Percentage | In Total     | Percentage | Solid | Liquid | Owner/    | Rest of | Total |
| Name Of Party | Cys      | Gallons  | Cys         |            | Gallons      |            | Waste | Waste  | Operator  | Chem-   |       |
|               |          |          | 372906      |            | 262252       |            |       |        | & Part of | Dyne    |       |
|               |          |          |             |            |              |            |       |        | Chem-Dyne |         |       |

|  |      |   |        |         |        |         |       |       |    |  |          |
|--|------|---|--------|---------|--------|---------|-------|-------|----|--|----------|
| FB, INC./TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) | 7350 | 0 | 372906 | 1.9710% | 262252 | 0.0000% | 0.20% | 0.00% | 1% |  | 1.19710% |
|--|------|---|--------|---------|--------|---------|-------|-------|----|--|----------|

Waste-in List for the Final Allocation Report and Recommendations, Skinner Landfill Superfund Site, April 12, 1999

|  |   |                    | Compaction               |                    |          | Years            | Solid     | Liquid    | Solid     | Liquid     | Response           | Solid Waste |            |
|--|---|--------------------|--------------------------|--------------------|----------|------------------|-----------|-----------|-----------|------------|--------------------|-------------|------------|
| PRP  | Source                                      | Amount or Capacity | or Multiplier or Divisor | Frequency or loads | Wk/Mo/Yr | 1 is the default | Sub Total | Sub total | Total Cys | Total Gals | Cost Dollar Credit | In Total    | Percentage |
|  | JOHN F BUSHELMAN CONSTRUCTION Sizemore      | 25                 | 1                        | 7.5                | 1        | 1                | 188       |           |           |            |                    | 372906      | 0.0000%    |
|  | JOHN F BUSHELMAN CONSTRUCTION Allen         | 25                 | 1                        | 7.5                | 1        | 1                | 188       |           |           |            |                    | 372906      | 0.0000%    |
|  | JOHN F BUSHELMAN CONSTRUCTION 1977 log      | 25                 | 1                        | 55                 | 1        | 1                | 1375      |           |           |            |                    | 372906      | 0.0000%    |
|  | JOHN F BUSHELMAN CONSTRUCTION 1984 log      | 25                 | 1                        | 10                 | 1        | 1                | 250       |           |           |            |                    | 372906      | 0.0000%    |
|  | JOHN F BUSHELMAN CONSTRUCTION 1986 Invoices | 25                 | 1                        | 18                 | 1        | 1                | 450       |           |           |            |                    | 372906      | 0.0000%    |
|  | JOHN F BUSHELMAN CONSTRUCTION Witnesses     | 2450               | 2                        | 1                  | 1        | 1                | 4900      |           |           |            |                    | 372906      | 0.0000%    |
| JFB, INC/TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) |   |                    |                          |                    |          |                  |           |           | 7350      |            |                    | 372906      | 1.9710%    |

Waste-in List for the Final Allocation Report and Recommendations, Skinner Landfill Superfund Site, April 12, 1999

|  | Liquid Waste |            |  |   |
|--|--------------|------------|--|---|
|  | In Total     | Percentage |  |   |
| PRP  | 266252       |            | Comments                                     | Comments                                      |
| JOHN F BUSHELMAN CONSTRUCTION                      | 266252       | 0.00%      | Based on report by JFB                       | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                      | 266252       | 0.00%      | Based on report by JFB                       |   |
| JOHN F BUSHELMAN CONSTRUCTION                      | 266252       | 0.00%      | Assumed \$1640/\$30 is 55 loads              | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                      | 266252       | 0.00%      | Assumed \$270/30 (9 loads) and \$35/\$35 (1) | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                      | 266252       | 0.00%      | Default of 25 cys/load used throughout       | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                      | 266252       | 0.00%      | Doubled document total of 2,450 cys          | Demo waste; likely some UST contaminated soil |
| JFB, INC/TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) | 266252       | 0.00%      |  |   |

Waste-in List in Solid Waste Volume Order for the Final Allocation Report and Recommendations, Skinner Landfill  
Superfund Site, April 12, 1999

|               | Solid    | Liquid   | Solid Waste |            | Liquid Waste |            |
|---------------|----------|----------|-------------|------------|--------------|------------|
|               | Waste In | Waste In | In Total    | Percentage | In Total     | Percentage |
| Name Of Party | Cys      | Gallons  | Cys         |            | Gallons      |            |
|               |          |          |             |            |              |            |

|   |      |   |        |         |        |         |
|---|------|---|--------|---------|--------|---------|
| JFB, INC./TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) | 7350 | 0 | 372906 | 1.9710% | 262252 | 0.0000% |
|---|------|---|--------|---------|--------|---------|

Waste-in List in Liquid Waste Volume Order for the Final Allocation Report and Recommendations, Skinner  
Landfill Superfund Site, April 12, 1999

|               | Solid    | Liquid   | Solid Waste |            | Liquid Waste |            |
|---------------|----------|----------|-------------|------------|--------------|------------|
|               | Waste In | Waste In | In Total    | Percentage | In Total     | Percentage |
| Name Of Party | Cys      | Gallons  | Cys         |            | Gallons      |            |

|   |      |   |        |         |        |         |
|---|------|---|--------|---------|--------|---------|
| JFB, INC./TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) | 7350 | 0 | 372906 | 1.9710% | 262252 | 0.0000% |
|---|------|---|--------|---------|--------|---------|

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

|               | Solid    | Liquid   | Solid Waste |            | Liquid Waste |            |       |        |           |         |       |
|---------------|----------|----------|-------------|------------|--------------|------------|-------|--------|-----------|---------|-------|
|               | Waste In | Waste In | In Total    | Percentage | In Total     | Percentage | Solid | Liquid | Owner/    | Rest of | Total |
| Name Of Party | Cys      | Gallons  | Cys         |            | Gallons      |            | Waste | Waste  | Operator  | Chem-   |       |
|               |          |          | 372906      |            | 262252       |            |       |        | & Part of | Dyne    |       |

|   |      |   |        |         |        |         |       |       |    |  |          |
|---|------|---|--------|---------|--------|---------|-------|-------|----|--|----------|
| JFB, INC./TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) | 7350 | 0 | 372906 | 1.9710% | 262252 | 0.0000% | 0.20% | 0.00% | 1% |  | 1.19710% |
|---|------|---|--------|---------|--------|---------|-------|-------|----|--|----------|



## JOHN F. BUSHELMAN CONSTRUCTION, INC.

John F. Bushelman died on May 8, 1995. A corporation now known as JFB, Inc. prepared the questionnaire response.

As I understand the facts, for quite some period of time, Mr. Bushelman operated as a sole proprietorship doing business as John F. Bushelman Construction. The sequence of events leading to the entity now called JFB, Inc. appears to be the following:

1. John F. Bushelman, doing business as John F. Bushelman Construction, began business operations sometime prior to 1976.
2. On April 27, 1976, Sharon Trucking Inc. was incorporated. It was an over-the-road trucking company that "became largely dormant by 1979." Questionnaire Response, p. 5. I assume that John F. Bushelman was the sole shareholder of Sharon Trucking Inc., but the matter is not clear from the response. He was its President, however.
3. The assets of the sole proprietorship, John F. Bushelman Construction, were transferred to Sharon Trucking Inc. as of December 31, 1988.
4. Sharon Trucking Inc. changed its name to John F. Bushelman Construction, Inc. at the same time as the asset transfer.
5. On February 28, 1995, John F. Bushelman Construction, Inc. entered into an agreement to sell certain personal property, inventory, fixtures and equipment to Kossen, Inc. for \$300,000, which included cash in the approximate amount of \$200,000 (although I was given a copy of a receipt that said that \$225,000 had been received from Kossen) and a promissory note in the amount of \$100,000. The note was secured by a security interest in certain collateral. I am told that Kossen did not assume any of the liabilities of John F. Bushelman Construction, Inc. I have reviewed the asset purchase agreement and it does, indeed, say that there is no assumption of any of seller's liabilities by Kossen (Article II.B., p. 3).
6. On April 4, 1995, John F. Bushelman, as grantor, transferred certain real estate to a trust in which Tracy Ann Engel is trustee. Mr. Bushelman also apparently transferred the stock in John F. Bushelman Construction, Inc. to the trust on or about April 4, 1995.
7. John F. Bushelman died on May 8, 1995.
8. It appears that the closing of the agreement to sell assets to Kossen occurred in September 1995. The agreement with Kossen was first amended on September 6, 1995 to remove from the assets being sold, 33 scrap underground storage tanks. An environmental assessment provided to me states that these tanks were pulled out of the ground at other sites, that some of these tanks have sludge in them that is leaking on the Bushelman property and that the sludge "is likely a hazardous waste."
9. Kossen also leased the property that John Bushelman transferred to the trust. Kossen paid \$225,000, as noted above. It issued a promissory note to John F. Bushelman Construction, Inc. and Tracey Engel, Trustee in the amount of \$100,000. It is not clear to me why Ms. Engel was a payee on the note. It also apparently paid \$50,000 to the company

and to Ms. Engel for a covenant not to compete. Kossen and the Trustee, Ms. Engel, also entered into an environmental remediation agreement. Kossen paid \$25,000 into an escrow fund and agreed to pay \$3,000 per month rent to the escrow. The escrow monies were to be used for the cleanup of an underground storage tank release (see item 10 below).

10. On October 23, 1995, John F. Bushelman Construction, Inc. changed its name to JFB, Inc.

11. John F. Bushelman Construction, Inc. apparently holds a Demand Note from Tracy Ann Engel in the amount of \$116,231.31. This money was loaned to the Trustee to pay for the cleanup. The Promissory Note from Kossen, Inc. in the amount of \$100,000. has apparently been assigned to Tracey Engel, as Trustee. I am told that the Demand Note is subject to an off-set as a result of extensive environmental remediation work required to be completed on the property at 11980 Runyan Drive, Sharonville, Hamilton County, Ohio, leased for the company's operations, as a result of leaking underground storage tanks allowed to be maintained on the property by John F. Bushelman Construction, Inc. The estimated cost of the remediation was \$140,000. The Promissory Note was supposed to have been paid in monthly installments of \$2,027.64 from October 1, 1995 through September 30, 2000.

12. JFB, Inc. is otherwise inactive. Its shares are held by Tracy Ann Engel, as Trustee. As noted above, the shares were transferred into trust before Mr. Bushelman's death, although I do not think I saw the paperwork effecting this transfer.

JFB argued that John F. Bushelman Construction as a sole proprietorship had the only contact with the Skinner Landfill. It says that neither Sharon Trucking nor John F. Bushelman Construction, Inc. (now JFB) ever had any contact with the Landfill.

"It is believed," the initial response said, that Mr. Bushelman would have transported or disposed of waste at the Skinner Landfill on four occasions. This statement is based on the following Skinner log entries:

|           |            |                                |
|-----------|------------|--------------------------------|
| 3/6/77:   | \$ 330.00  | "trucking hauling charge"      |
| 11/16/77: | \$1,310.00 | "trucking hauling charge"      |
| 7/25/84:  | \$ 240.00  | "miscellaneous dumping charge" |
| 11/02/84: | \$ 65.00   | "miscellaneous dumping charge" |
| Total     | \$1,945.00 |                                |

The waste would have been wood, stumps, brush and biodegradable material and, possibly some stone or concrete material for "unknown" customers, according to the interview of Thomas G. Folzenlogen, apparently a former employee. Mr. Folzenlogen apparently also said that Mr. Bushelman did not dispose of wastes containing any hazardous substances, bi-products, co-products, recycled substances or any other pollutants, contaminants, hazardous waste, solid waste, liquid waste, waste-water, volatile organic chemicals, metals, asbestos, sludges, paint, paint thinners, medical waste, caustics, acids or any other "hazardous substance," including petroleum products. The company believed "with a certainty" that no Bushelman entity ever transported or arranged for the transport of barrels, drums, tanks or containers to the Site, whether empty or nearly empty.

Mr. Folzenlogen suggested that it was probably on November 2, 1984 when Mrs. Skinner held one of his drivers hostage with a loaded gun until he personally delivered to her a check for a few hundred dollars to pay their account in full. He remembers that John F. Bushelman decided never to have anything else to do with the Site since it was generally accepted that the operators were "crazy." Nonetheless, in a subsequent search for records in response to follow up questions, JFB found an October 15, 1986 Skinner invoice for disposal of 17 loads of solid waste at \$25 per load (\$425) and a November 4, 1986 invoice for one load at \$25. JFB also explained that its records were otherwise destroyed in one or more basement flooding incidents.

JFB did a thorough job of tracking down former employees, it appears. A Clyde T. Allen recalled dumping sometime in the early 1970s seven or eight loads of dirt, brush, stump, concrete and possibly some brick on a couple of projects where Bushelman Construction cleared off lots for a customer. Ronald Sizemore recalled that sometime between 1973 - 1975, he hauled trees to the Landfill and, on a few occasions (which I interpret also to represent seven to eight loads), some dirt and maybe some concrete.

Other than to note the information in the nexus documents that describes John F. Bushelman Construction's role in the April 1976 closure of the lagoon, the response of JFB addresses this activity through the results of one interview. Fred Rasnick, a former loader operator, recalled that he and three other operators were directed to the Site and "they worked on three loaders and a dozer and maybe a backhoe." They were told to fill an old farm pond with dirt already around the pond. He recalled that his loader broke down after six or seven hours of moving dirt into the pond. The work continued a "day or so longer without him."

In sum then, JFB acknowledges \$1,945 in transactions with the Landfill in March and November 1977 and July and November 1984. It acknowledges the disposal of 18 loads in October and November 1986. Its interviews confirm the use of the Site for seven to eight loads in the early 1970s (Mr. Allen) and dumping on several occasions in the 1973 - 1975 time period (Mr. Sizemore).

**Site Witnesses.** Ray Skinner described Bushelman as the source of demolition waste, big tree stumps and concrete, including waste associated with "filling tanks" (service stations). The presence of 33 scrap underground storage tanks on Bushelman's property at the time of the sale to Kossen confirms that Bushelman hauled such tanks. R. Skinner Depo., pp. 128, 131, 569-571, 787, 835, 995.

Ray Skinner suggested that Bushelman used 20 cy dump trucks and up to 40 cy dump trailers. With one or the other vehicle, Bushelman delivered two to three loads per month, Ray Skinner said, for a "lot of years." Ray Skinner Depo., p. 298-299, 394-396. He thought that Bushelman started in the 1960s and continued through closing. He also testified that Bushelman participated in the closing of the lagoon. Ray Skinner Depo., p. 180-182, 396, 428, 446, 1140, 1326, 1332.

Elsa Skinner recalled that Bushelman was involved with what she called "oil cleanup waste" and construction debris. She described him as a customer on and off for at least ten years. E. Skinner Depo., pp. 246-247.

Maria Roy described the disposal of construction debris, including asphalt. She said that they had a hard time getting Bushelman to pay. She said that he averaged about a load a month while using the Landfill. She recalled him working on the dump after the fire to help her father "clean up the dump." M. Roy Depo., pp. 82-86, 164-165.

Gene Crow (dating back to the 1960s) said that Bushelman used to bring in equipment to cover the Landfill, especially when the Landfill's bulldozer had broken down. G. Crow Depo., pp. 41-42.

Dexter Gregory thought that Bushelman brought in concrete, dirt and rebar once or twice a year using a vehicle with a capacity of 15 cys. D. Gregory Depo., pp. 131-132.

Lloyd Gregory recalled dumping "maybe" 20-30 times with the use of a 20-30 cy dump truck. Bushelman brought in "every kind of debris," referring to demolition debris. Gregory said that Bushelman went back a number of years, to a time before he began working at the Landfill (around 1985 or 1986). L. Gregory Depo., pp. 77-78.

Rodney Miller said that Bushelman brought in landscaping-type wastes and general construction waste (he described it as cardboard, wood, bricks, concrete, dirt, bottles, caulking compounds and so on). He said that Bushelman had dump trucks and dump trailers with capacities ranging from 4 cy to 40 cy. He said that Bushelman was a regular customer from 1978 up to the time that the Landfill closed. He estimated that he himself saw Bushelman trucks at the Landfill about 100 times. R. Miller Depo., pp. 68-71.

I first address the responsible party issue. I then address the waste-in amount.

**Responsible Parties.** It appears to me that the Trust as recipient of the land and stock of John F. Bushelman, individually, is responsible for the liability of John F. Bushelman individually. It also appears to me that there is a high likelihood that JFB, Inc. is also liable as a successor to John F. Bushelman or as an entity that impliedly assumed his liabilities. See North Carolina ex rel. Howes v. W.R. Peele, Sr. Trust, 876 F. Sup. 733, 743 (E.D. N.C. 1995) (holding that a trust, as beneficiary of decedent's estate, should be deemed to hold assets received from the estate in trust to satisfy the decedent's liabilities).

**Operator Liability.** While I realize that Bushelman might be an arranger for disposal by virtue of the 1976 lagoon closure, I am treating this activity as related to operator liability only. As noted elsewhere, JFB's bald conclusion that "there can be absolutely no liability or culpability imputed to Bushelman because he was hired to provide equipment and dirt around on Skinner's own property for the purpose of filling in the pond or lagoon" (Position Paper, p. 15) misapprehends the reach of CERCLA.

**Waste-in Amount.** After studying the documents and testimony and JFB's responses, I am treating a Bushelman load as representing 25 cys. I have interpreted the questionnaire response and the Skinner log entries as follows:

| <u>Source</u>    | <u>Calculation</u>                                | <u>Total</u> |
|------------------|---|--------------|
| Sizemore         | 7.5 loads x 25 cys                                | 187.5 cys    |
| Allen            | 7.5 loads x 25 cys                                | 187.5        |
| 1977 log entries | \$1,640 @ \$30 = 55 loads x 25 cys                | 1,375        |
| 1984 log entries | \$305 (9 @ \$30 and 1 @ \$35) = 10 loads x 25 cys | 250          |

|              |                   |            |
|--------------|-------------------|------------|
| 1986 invoice | 18 loads x 25 cys | <u>450</u> |
|              | Total             | 2,450 cys  |

The testimony of Rodney Miller represents about 2,500 cys (100 loads x 25 cys) and would overlap the 1984 and 1986 log entries and/or invoices. The testimony of Lloyd Gregory would represent at least 750 cys and would overlap the 1984 and 1986 information. The testimony of Dexter Gregory would represent 45 cys (15 cys x 1.5 loads x 2 years) and does not overlap the information above. Ray Skinner's testimony represents about 15,000 cys using 2.5 loads per month x 12 months x 25 cys per load and, assuming a 20 year usage, and would overlap all of the information above.

I have decided to triple the Bushelman waste-in amount to account for all of this testimony. The resulting figure is 7,350 cys. I believe that this figure fairly accounts for the witnesses' testimony when contrasted with the recollections of the Bushelman drivers and accounting personnel that JFB could locate. I view this waste as including dirt, concrete, asphalt, construction debris, tree stumps and related wastes. I also assume that this waste included some contaminated dirt from underground storage tank removal. (Elsa Skinner testified that oil cleanup waste was brought in one time. Elsa Skinner Depo., p. 247.)

With respect to operator liability, my inclination is to add a slight multiplier to this waste-in total in the Final Report to account for the Section 107(a)(2) liability of this party. Before doing so, I wanted to hear the views of the parties.

|   |               |           | Compaction    |           |          | Years    | Solid | Liquid | Solid | Liquid | Response    | Solid Waste |            |
|---|---------------|-----------|---------------|-----------|----------|----------|-------|--------|-------|--------|-------------|-------------|------------|
|   |               | Amount or | or Multiplier | Frequency |          | 1 is the | Sub   | Sub    | Total | Total  | Cost Dollar | In Total    | Percentage |
| PRP   | Source        | Capacity  | or Divisor    | or loads  | Wk/Mo/Yr | default  | Total | total  | Cys   | Gals   | Credit      | 363690      |            |
| JOHN F BUSHELMAN CONSTRUCTION                       | Sizemore      | 25        | 1             | 7.5       | 1        | 1        | 188   |        |       |        |             | 363690      | 0.0000%    |
| JOHN F BUSHELMAN CONSTRUCTION                       | Allen         | 25        | 1             | 7.5       | 1        | 1        | 188   |        |       |        |             | 363690      | 0.0000%    |
| JOHN F BUSHELMAN CONSTRUCTION                       | 1977 log      | 25        | 1             | 55        | 1        | 1        | 1375  |        |       |        |             | 363690      | 0.0000%    |
| JOHN F BUSHELMAN CONSTRUCTION                       | 1984 log      | 25        | 1             | 10        | 1        | 1        | 250   |        |       |        |             | 363690      | 0.0000%    |
| JOHN F BUSHELMAN CONSTRUCTION                       | 1986 Invoices | 25        | 1             | 18        | 1        | 1        | 450   |        |       |        |             | 363690      | 0.0000%    |
| JOHN F BUSHELMAN CONSTRUCTION                       | Witnesses     | 2450      | 2             | 1         | 1        | 1        | 4900  |        |       |        |             | 363690      | 0.0000%    |
| JFB, INC./TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) |               |           |               |           |          |          |       |        | 7350  |        |             | 363690      | 2.0210%    |

Waste-in List for the Preliminary Allocation Report and Recommendations, Skinner Landfill Superfund Site, October 6, 1998

|   | Liquid Waste  |            |  |   |
|---|---------------|------------|--|---|
|   | In Total      | Percentage |  |   |
| <b>PRP</b>  | <b>259308</b> |            | <b>Comments</b>                              | <b>Comments</b>                               |
| JOHN F BUSHELMAN CONSTRUCTION                       | 259308        | 0.00%      | Based on report by JFB                       | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                       | 259308        | 0.00%      | Based on report by JFB                       |   |
| JOHN F BUSHELMAN CONSTRUCTION                       | 259308        | 0.00%      | Assumed \$1640/\$30 is 55 loads              | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                       | 259308        | 0.00%      | Assumed \$270/30 (9 loads) and \$35/\$35 (1) | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                       | 259308        | 0.00%      | Default of 25 cys/load used throughout       | Demo waste; likely some UST contaminated soil |
| JOHN F BUSHELMAN CONSTRUCTION                       | 259308        | 0.00%      | Doubled document total of 2,450 cys          | Demo waste; likely some UST contaminated soil |
| JFB, INC./TRUST (TRACEY ENGEL, TRUSTEE) (BUSHELMAN) | 259308        | 0.00%      |  |   |

JOHN F. BUSHELMAN CONSTRUCTION, INC.



4-8 C 7 3 6  
FEB 17 1969

ARTICLES OF INCORPORATION  
OF  
SHARON TRUCKING, INC.

APPROVED

By *K. J. M.*

Date *1-27-76*

Amount *50.00*

9629

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, for profit, under the General Corporation Act of Ohio, do hereby certify:

- FIRST: The name of the corporation shall be Sharon Trucking, Inc.
- SECOND: The place in the State of Ohio where its principal place of business is to be located is Cincinnati, Hamilton County, Ohio, but the corporation may own property and conduct operations both within and without the State of Ohio.
- THIRD: The purposes for which the corporation is formed are as follows:
- a) To engage in all phases of the trucking business;
  - b) To carry on the business of buying, selling, leasing, holding and otherwise dealing in real and personal property of any kind, nature, or description;
  - c) To purchase, acquire, hold, convey, lease, mortgage, or dispose of property, real or personal, tangible or intangible, of any kind, nature or description;
  - d) To borrow money, and issue, sell, or pledge bonds, promissory notes, bills of exchange, debentures and other operations and evidences of indebtedness, payable at a specified time or times, or payable upon the happening of a specified event or events, whether secured by mortgage, pledge, or otherwise, or unsecured;
  - e) To purchase, acquire, guarantee, sell, pledge, hold, and dispose of shares of stock, bonds and other evidences of indebtedness of its own or of any other corporation, domestic or foreign;

- f) To acquire the good will, rights and property and to undertake the whole or any part of the assets or liabilities of any persons, firm, association or corporation; to pay for the same in cash, the stock of this company, bonds or otherwise, to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired; and to exercise all the powers necessary or convenient in and about the conduct and management of such business;
- g) To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, alone or in company with others.

FOURTH: The maximum number of shares which the corporation is authorized to have outstanding is Five Hundred (500) shares, of which all shall be without par value.

FIFTH: The amount of capital with which the corporation will begin business is Five Hundred (\$500.00) Dollars.

IN WITNESS WHEREOF, we have hereunto subscribed our names this

23rd day of April, 1976.

Arthur D. Weber, Jr.  
Arthur D. Weber, Jr.

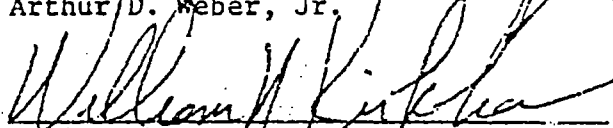
William N. Kirkham  
William N. Kirkham

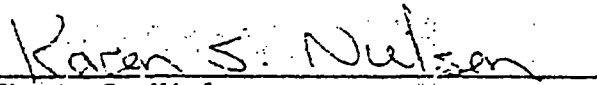
Karen S. Nielsen  
Karen S. Nielsen

KNOW ALL MEN BY THESE PRESENTS THAT:

William N. Kirkham, whose address is 1200 American Building, Cincinnati, Ohio 45202, Hamilton County, a natural person and resident of said county, being the County in which the principal office of Sharon Trucking, Inc. is located, is hereby appointed as the person upon whom process, tax notices and demands against the same Sharon Trucking, Inc., is served.

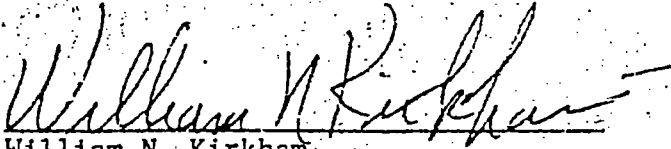
  
Arthur D. Weber, Jr.

  
William N. Kirkham

  
Karen S. Nielsen

Cincinnati, Ohio  
April 23, 1976

I hereby accept the appointment as representative of your company upon whom process, tax notices and demands may be served.

  
William N. Kirkham

G0782-1893

Form SH AMD, August 1983

Prescribed by **Sherrod Brown**  
Secretary of State

Charter # 480736  
Approved by SKG  
Date 12-21-89  
Fee \$ 35.00

# Certificate of Amendment

By Shareholders  
to the Articles of Incorporation of

SHARON TRUCKING, INC

(Name of Corporation)

JOHN F. BUSHELMAN, who is ☐ Chairman of the Board ☒ President ☐ Vice President (Check one)

and THOMAS G. FOLZENLOGEN, who is ☒ Secretary ☐ Assistant Secretary (Check one)

of the above named Ohio corporation for profit with its principal location at 11980 RUNYAN DRIVE, CINCINNATI, OHIO 45241  
Ohio do hereby certify that: (check the appropriate box and complete the appropriate statements)

☒ a meeting of the shareholders was duly called for the purpose of adopting this amendment and held on December 13  
19 88, at which meeting a quorum of the shareholders was present in person or by proxy, and by the affirmative vote of  
the holders of shares entitling them to exercise 100 % of the voting power of the corporation.

☐ in a writing signed by all of the shareholders who would be entitled to notice of a meeting held for that purpose,

the following resolution to amend the articles was adopted:

The sole shareholder elected to change the  
name of Sharon Trucking, Inc. to  
John F. Bushelman Construction Inc. as of  
December 31, 1989

IN WITNESS WHEREOF, the above named officers, acting for and on the behalf of the corporation, have hereto subscribed

their names this 5th day of Dec, 19 89.

BY John F. Bushelman  
(Chairman, President or Vice President)  
BY Thomas G. Folzenlogen  
(Secretary or Assistant Secretary)

NOTE: Ohio law does not permit one officer to sign in two capacities. Two separate signatures are required, even if this necessitates the election of a second officer before the filing can be made.



Prescribed by  
Bob Taft, Secretary of State  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43266-0418  
Form AGS (September 1992)

HC496-0430

Charter No. 480736  
Approved LMC  
Date 12-15-92  
Fee \$3.00

92110939401

## SUBSEQUENT APPOINTMENT OF AGENT

John F. Bushelman Construction, Inc. hereby appoints  
(name of corporation)

G. Robert Hines, 1014 Vine Street, Suite 2525  
(name of new agent) (street address)

Cincinnati, Ohio 45202  
(city) (zip code)

NOTE: P.O. Box addresses are not acceptable.

to succeed William N. Kirkham as agent upon whom any process,  
(Name of Former Agent)

notice or demand required or permitted by statute to be served upon the corporation may be served.

This line is to be signed by a corporate officer.

John F. Bushelman

Title: Pres.

### Acceptance of Appointment

The undersigned, G. Robert Hines, named herein as the statutory agent for  
John F. Bushelman Construction, Inc., hereby acknowledges and accepts  
(name of corporation)  
the appointment of statutory agent for said corporation.\*\*

G. Robert Hines

Statutory Agent

### INSTRUCTIONS

- 1) The statutory agent for a corporation may be (a) a natural person who is a resident of Ohio, or (b) an Ohio corporation or a foreign profit corporation licensed in Ohio which has a business address in this state and is explicitly authorized by its articles of incorporation to act as a statutory agent. R.C. 1701.07(A), 1702.06(A).
- 2) A subsequent appointment of agent must be signed by the chairman of the board, the president, a vice-president, the secretary or an assistant secretary. R.C. 1701.07(L)
- 3) The filing fee is \$3.00. R.C. 1701.07(M), 1702.06(C). Please make checks payable to the Secretary of State.

\*\* As of October 8, 1992, R.C. 1701.07(B) will be amended to require acknowledgement and acceptance by the appointed statutory agent.

OHIO SECRETARY OF STATE  
PROCESSING STATEMENT  
12/22/92

CHARTER NUMBER: 480736  
ROLL AND FRAME: H495-0428

HC495-0428

CORPORATION:

DOCUMENT NUMBER

CODE

FEE

V F. BUSHELMAN CONSTRUCTION, INC.

92110939401

AGS

3.00

048337

RETURN TO: G. ROBERT HINES  
2525 KROGER BLDG  
1014 VINE ST  
CINCINNATI OH 45202

0363



# The State of Ohio

Bob Taft

Secretary of State

480736

## Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous

Filings; that said records show the filing and recording of: AMD CHN

of:

JFB INC. FORMERLY JOHN F. BUSHELMAN CONSTRUCTION, INC.

United States of America  
State of Ohio  
Office of the Secretary of State

Recorded on Roll 5325 at Frame 1593 of  
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State at

Columbus, Ohio, this 26TH day of OCT ,

A.D. 19 95 .



*Bob Taft*

Bob Taft  
Secretary of State

CLERK OF STATE  
IN STATEMENT  
5

05325-1591

CHARTER NUMBER: 480736  
ROLL AND FRAME: 5325-1591

| ACTION:                                 | DOCUMENT NUMBER | CODE | FEE    |
|---|-----------------|------|--------|
|   | -----           | ---- | ----   |
| C. FORMERLY JOHN F. BUSHELMAN CONSTRUCT | 95102626501     | AMD  | 35.00  |
| NC.                                     |                 | CHN  | NO FEE |

049369

TURN TO: G. ROBERT HINES  
KROGER BLDG #2525  
1014 VINE ST  
CINCINNATI OH 45202

TOTAL : 35.00  
  
0480





Prescribed by  
BOB TAFT, Secretary of State  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43266-0418

05325-1593

Charter No. 480736  
Approved CR  
Date 10-26-95  
Fee 35.00

# CERTIFICATE OF AMENDMENT BY SHAREHOLDERS TO THE ARTICLES OF INCORPORATION OF

JOHN F. BUSHELMAN CONSTRUCTION, INC.

(Name of Corporation)

Tracy Ann Engel

☐ Chairman of the Board ☒ President ☐ Vice President (Please check one.)

and Suzanne Romer

☒ Secretary ☐ Assistant Secretary (Please check one.)

of the above named Ohio corporation organized for profit does hereby certify that: (Please check the appropriate box and complete the appropriate statements.)

☐ a meeting of the shareholders was duly called for the purpose of adopting this amendment and held on \_\_\_\_\_, 19\_\_\_\_ at which meeting a quorum of the shareholders was present in person or by proxy, and by the affirmative vote of the holders of shares entitling them to exercise \_\_\_\_\_ % of the voting power of the corporation.

☒ in a writing signed by all of the shareholders who would be entitled to notice of a meeting held for that purpose, the following resolution to amend the articles was adopted:

RESOLVED, that Article FIRST of the corporation's Articles of Incorporation be amended to read as follows:

FIRST: The name of the corporation shall be:  
JFB, Inc.

RESOLVES FURTHER, that the President and Secretary of the corporation are hereby authorized and directed to take such action as may be necessary to file said amendment to the Articles of Incorporation with the Ohio Secretary of State.

IN WITNESS WHEREOF, the above named officers, acting for and on the behalf of the corporation, have hereto subscribed their names this

23 day of October, 1995.

By Tracy Ann Engel, President  
\_\_\_\_\_  
(Chairman, President, Vice President)

By Suzanne Romer  
\_\_\_\_\_  
(Secretary, Assistant Secretary)

NOTE: OHIO LAW DOES NOT PERMIT ONE OFFICER TO SIGN IN TWO CAPACITIES, TWO SEPARATE SIGNATURES ARE REQUIRED, EVEN IF THIS NECESSITATES THE ELECTION OF A SECOND OFFICER BEFORE THE FILING CAN BE MADE.

**JAMES V. MANDEL**, *Certified Public Accountant*

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JOHN F. BUSHELMAN CONSTRUCTION CO, INC..

FINANCIAL STATEMENTS

DECEMBER 31, 1994

**JAMES V. MANDEL**, *Certified Public Accountant*

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7373 Beechmont Avenue • Cincinnati, Ohio 45230 • 513-231-6660

John F. Bushelman  
John F. Bushelman Construction Company, Inc.  
Cincinnati, Ohio

I have compiled the accompanying balance sheet of John F. Bushelman Construction Company, Inc. as of December 31, 1994, and related statements of income, retained earnings, and cash flows for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. I have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any form of assurance on them.

As of January 1, 1995, the Company negotiated an agreement to sell its goodwill and fixed assets to a newly formed corporation. Please refer to Footnote G.

  
James V. Mandel  
Certified Public Accountant

April 28, 1995 ✓

JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
BALANCE SHEET  
DECEMBER 31, 1994

ASSETS

CURRENT ASSETS:

|   |          |
|---|----------|
| Cash  | \$ 976   |
| Accounts Receivable - Note A  | 440,291  |
| Customers, including retainages of \$41,608   |          |
| Accounts Receivable - Other   | 6,833    |
| Advance-employees   | 2,000    |
| Prepaid Expenses  | 1,024    |
| Costs and estimated earnings in excess of<br>billings on uncompleted contracts -<br>Notes D and E | <u>0</u> |
| TOTAL CURRENT ASSETS  | 451,124  |

PROPERTY, PLANT, AND EQUIPMENT:

|                                |                  |
|--------------------------------|------------------|
| Construction equipment         | 412,874          |
| Trucks/trailers                | 144,861          |
| Automotive equipment           | 20,760           |
| Furniture and Fixtures         | <u>15,160</u>    |
|                                | 593,655          |
| Less: Accumulated depreciation | <u>(531,125)</u> |
|                                | 62,530           |

OTHER ASSETS:

|          |                  |
|----------|------------------|
| Deposits | <u>1,844</u>     |
|          | <u>\$515,498</u> |

(See Accountant's Compilation Report and  
Notes to Financial Statements)

## LIABILITIES AND SHAREHOLDER'S EQUITY

### CURRENT LIABILITIES:

|   |            |
|---|------------|
| Accounts Payable  |            |
| Trade   | \$169,947  |
| Billings in excess of costs and estimated earnings on uncompleted contracts - Notes D and E | 45,215     |
| Current maturities of long-term obligations - Notes B and C                                 | 90,327     |
| Accrued liabilities   |            |
| Federal Income Tax  | 6,000      |
| Payroll and other taxes   | 59,820     |
| State and Local Income Taxes  | <u>801</u> |
| TOTAL CURRENT LIABILITIES   | 372,110    |

|  |               |
|--|---------------|
| LONG-TERM OBLIGATIONS - LESS CURRENT MATURITIES - Note C | <u>47,174</u> |
|--|---------------|

|                   |         |
|-------------------|---------|
| TOTAL LIABILITIES | 419,284 |
|-------------------|---------|

### SHAREHOLDER'S EQUITY

|   |               |
|---|---------------|
| Common stock, no par value, 100 shares issued and outstanding | 1,000         |
| Paid-in Capital   | 10,000        |
| Retained Earnings   | <u>85,214</u> |

|                            |               |
|----------------------------|---------------|
| TOTAL SHAREHOLDER'S EQUITY | <u>96,214</u> |
|----------------------------|---------------|

\$515,498

(See Accountant's Compilation Report and  
Notes to Financial Statements)

JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
STATEMENT OF INCOME AND RETAINED EARNINGS  
FOR THE YEAR ENDED DECEMBER 31, 1994

|   |                  |
|---|------------------|
| Contract Revenue and Rental Income                            | \$1,568,323      |
| Cost of Contracts - Schedule I                                | <u>1,166,458</u> |
| GROSS PROFIT  | \$ 401,865       |
| Selling, General and Administrative<br>Expenses - Schedule II | <u>347,524</u>   |
| OPERATING PROFIT  | \$ 54,341        |
| Other Income (expense)  |                  |
| Interest Expense  | (18,931)         |
| Other-Schedule III  | <u>3,265</u>     |
|   | <u>(15,666)</u>  |
| NET INCOME (LOSS) BEFORE TAX                                  | \$ 38,675        |
| Provision for Federal Income Tax                              | <u>6,000</u>     |
| NET INCOME (LOSS)   | \$ 32,675        |
| RETAINED EARNINGS, JANUARY 1, 1994                            | <u>52,539</u>    |
| RETAINED EARNINGS, DECEMBER 31, 1994                          | <u>\$ 85,214</u> |

(See Accountant's Compilation Report and  
Notes to Financial Statements)

JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
STATEMENT OF CASH FLOWS  
FOR THE YEAR ENDED DECEMBER 31, 1994

CASH FLOWS FROM OPERATING ACTIVITIES:

|   |                 |                    |
|---|-----------------|--------------------|
| NET INCOME  |                 | \$ 32,675          |
| Adjustments to reconcile net income to net cash provided by operating activities:       |                 |                    |
| Depreciation  | 27,796          |                    |
| Changes in operating assets and liabilities:  |                 |                    |
| Increase in Accounts Receivable and Prepaid Expenses                                    | (102,550)       |                    |
| Decrease in Accounts Payable and Accrued Expenses                                       | (12,949)        |                    |
| Decrease in costs and estimated earnings in excess of billings on uncompleted contracts | 31,141          |                    |
| Increase in billings in excess of costs and estimated earnings on uncompleted contracts | <u>39,589</u>   |                    |
| Total adjustment in net income  |                 | <u>(16,973)</u>    |
| Net Cash Provided (used) by operating activities  |                 | <u>\$ 15,702</u>   |
| CASH FLOWS FROM INVESTING ACTIVITIES:   |                 |                    |
| Net purchases of plant, property, and equipment   | <u>(21,370)</u> |                    |
| Net cash flow provided (used) by investing activities                                   |                 | <u>\$ (21,370)</u> |
| CASH FLOWS FROM FINANCING ACTIVITIES:   |                 |                    |
| Net proceeds (payments) on Note payables  | \$ (7,432)      |                    |

(See Accountant's Compilation Report and  
Notes to Financial Statements)

|   |                   |
|---|-------------------|
| Net cash provided (used) by<br>financing activities | <u>\$ (7,432)</u> |
|---|-------------------|

|   |          |
|---|----------|
| Net Increase (Decrease) in Cash<br>and Cash Equivalents | (13,100) |
|---|----------|

|   |               |
|---|---------------|
| Cash and Cash Equivalents-<br>Beginning of year | <u>14,076</u> |
|---|---------------|

|   |               |
|---|---------------|
| Cash and Cash Equivalents-<br>End of year | <u>\$ 976</u> |
|---|---------------|

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION

|  |                  |
|--|------------------|
| Cash paid during the year for interest | <u>\$ 18,931</u> |
|--|------------------|

|  |               |
|--|---------------|
| Cash paid during the year for income taxes | <u>\$ 252</u> |
|--|---------------|

(See Accountant's Compilation Report and  
Notes to Financial Statements)



JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED DECEMBER 31, 1994

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

John F. Bushelman Construction Company, Inc., primarily operates as an excavating contractor for commercial projects. The Company also leases equipment to unaffiliated third parties. A summary of the significant accounting policies applied in the preparation of the accompanying financial statements follows:

1. Form of Ownership

The Company is a corporation solely owned by John F. Bushelman.

2. Revenue and Cost Recognition

The Company recognizes revenues from fixed-price and modified fixed-price construction contracts on the percentage-of-completion method, measured by the percentage of cost incurred to date to estimated total cost for each contract. That method is used because management considers total cost to be the best available measure of progress on the contracts.

Contract costs include all direct material and labor costs and those indirect costs related to contract performance, such as indirect labor, supplies, tools, repairs, and depreciation. Selling, general, and administrative costs are charged to expense as incurred. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions, and estimated profitability may result in revisions to costs and income, which are recognized in the period in which the revisions are determined.

The asset, "Costs and estimated earnings in excess of billings on uncompleted contracts," represents revenues recognized in excess of amounts billed. The liability, "Billings in excess of costs and estimated earnings on uncompleted contracts," represents billings in excess of revenues recognized.

3. Depreciation and Amortization

Except as noted, depreciation and amortization are provided in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives, principally on the accelerated method.

(See Accountant's Compilation Report)

## NOTES TO FINANCIAL STATEMENTS - CONTINUED

### 4. Income Taxes

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due. For tax and financial reporting, the Company uses the percentage of completion-capitalized cost method of recognizing revenues on long-term contracts. Under this method, a portion of contract revenues is deferred until contract completion.

### 5. Bad Debts

The company uses the direct method to record Bad Debts. If the company had accrued an allowance for doubtful accounts the results would be the same as the direct method.

## NOTE B - TRANSACTIONS WITH RELATED PARTIES

Effective December 31, 1988, the John F. Bushelman Construction Company, a sole proprietorship, merged into Sharon Trucking, Inc. changed its name to John F. Bushelman Construction Company, Inc. The assets and liabilities were contributed at their cost basis to the company in exchange for debt and equity as follows:

|                                |                   |
|--------------------------------|-------------------|
| Cash                           | \$ 7,798          |
| Note Receivable -              |                   |
| Sharon Amusements              | 107,690           |
| Workers Comp deposit           | 1,000             |
| Employee advances              | 585               |
| Construction equipment         | 631,331           |
| Automotive equipment           | 95,516            |
| Furniture & Fixtures           | 7,615             |
| Less: Accumulated depreciation | <u>(653,694)</u>  |
| Total Assets                   | <u>\$ 197,841</u> |
| Accrued taxes                  | \$ 32,666         |
| Notes payable                  | 62,772            |
| Note payable-shareholder       | 70,585            |
| Note payable-related party     | 21,818            |
| Paid-in capital                | <u>10,000</u>     |
| Total Liabilities and Equity   | <u>\$ 197,841</u> |

(See Accountant's Compilation Report)

NOTES TO FINANCIAL STATEMENTS - CONTINUED

The debt payable to the shareholder is evidenced by two notes as follows:

Demand Note date December 31, 1989.

Interest accrues at a stated percentage tied to the applicable Federal Rate for short-term debts. In 1994, the rate was 3.98%, annualized. Interest expense recorded in 1994 was \$987.59.

\$ 37,130

Term Note as of July 30, 1992.

This note is payable in monthly installments of \$2,124.70, including interest @ \$10% through August, 1997:

58,188

Total obligations to shareholder:

\$ 95,318

John F. Bushelman Construction Company, Inc., leases rental real estate owned by the sole shareholder, John Bushelman. Rents paid in 1994 were \$24,000. The property is located at 11980 Runyan Drive, Cincinnati, Ohio.

During 1986, the John F. Bushelman Construction Company (sole proprietorship) borrowed \$30,000 from a related party on a demand note bearing interest at the rate of 9.5%. The company recorded interest expense of \$1,897 in 1994. The principal balance on December 31, 1994, is \$21,868.

NOTE C - LONG-TERM DEBT

Note Payable, Bank

Due in monthly installments of \$454.56 including interest of 8.5% through April, 1995, secured by the shareholder's marketable securities

3,992

Note Payable, Shareholder

Demand note accruing at the applicable Federal rate for short-term debt

37,130

Note Payable, Shareholder

Due in monthly installments of \$2,124.70 including interest at 10% through August, 1997

58,188

(See Accountant's Compilation Report)

NOTES TO FINANCIAL STATEMENTS - CONTINUED

Note Payable, Bank

Due in monthly installments of \$569.87  
including interest at 8.61% through  
January, 1997, secured by the  
related asset

13,026

Note Payable, Bank

Due in monthly installments of \$340.84  
including interest at 7.88% through  
October, 1995, secured by the  
related asset

3,297

Note Payable, Other

Demand note due to a related party,  
bearing interest at an annual rate of  
9.5% personally guaranteed by the sole  
shareholder

21,868

\$137,501

Less: Current Maturities

90,327

\$47,174

NOTE D - UNCOMPLETED CONTRACTS

At December 31, 1994, the status of uncompleted contracts was as follows:

|   |                |                |
|---|----------------|----------------|
| Billings on uncompleted contracts       |                | \$493,872      |
| Costs incurred on uncompleted contracts | \$290,040      |                |
| Estimated earnings thereon              | <u>158,617</u> |                |
|   |                | <u>448,657</u> |

|   |  |               |
|---|--|---------------|
| Net billings in excess of costs and estimated earnings on uncompleted contracts |  | <u>45,215</u> |
|---|--|---------------|

Balance sheet classifications:

|   |    |                  |
|---|----|------------------|
| Current asset - costs and estimated earnings in excess of billings on uncompleted contracts     | \$ | 0                |
| Current liability - billings in excess of costs and estimated earnings on uncompleted contracts |    | <u>(45,215)</u>  |
|   |    | <u>\$ 45,215</u> |

(See Accountant's Compilation Report)

NOTES TO FINANCIAL STATEMENTS - CONTINUED

NOTE E - BACKLOG

The following schedule summarizes changes in backlog on contracts during the year ended December 31, 1994. Backlog represents the amount of revenue the Company expects to realize from work to be performed on uncompleted contracts in progress at year end.

|  |                  |
|--|------------------|
| Backlog balance at Dec. 31, 1993         | \$ 88,223        |
| New contracts during the year            | <u>1,564,410</u> |
|  | 1,652,633        |
| Less contract revenue earned during year | <u>1,568,323</u> |
| Backlog balance at Dec. 31, 1994         | <u>\$ 84,310</u> |

NOTE F - FIXED ASSETS

Machinery and equipment carried on the books and fully depreciated but abandoned over the years was removed. Management estimated value at \$270,000. No gain or loss resulted since this equipment was fully depreciated.

NOTE G - SUBSEQUENT EVENTS

The Company entered into an agreement effective January 1, 1995, to sell its fixed assets and goodwill to a newly formed corporation for \$300,000. The fixed asset value was established at \$250,000 which had a net book value of \$62,530 generating a gain of \$187,470. The Company also had a gain of \$50,000 for goodwill.

ACCOUNTANT'S COMPILATION REPORT  
ON SUPPLEMENTARY INFORMATION

John F. Bushelman  
John F. Bushelman Construction Company, Inc.  
Cincinnati, Ohio

The accompanying supplementary information contained in the Schedules I - III for the year ended December 31, 1994, is presented only for analysis purposes and has been compiled by me from information that is the representation of management without audit or review, and I do not express an opinion or any other form of assurance on such information.

Cincinnati, Ohio  
April 27, 1995

JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
SCHEDULE I  
SUPPLEMENTAL SCHEDULE OF COST OF CONTRACTS  
FOR THE YEAR ENDED DECEMBER 31, 1994

|                            |                    |
|----------------------------|--------------------|
| Supervision                | \$ 90,152          |
| Drivers                    | 84,635             |
| Laborers                   | 33,549             |
| Operators                  | 206,296            |
| Material                   | 188,174            |
| Hired Equipment            | 174,083            |
| Bond and Bidding           | 430                |
| Depreciation               | 27,796             |
| Engineering Services       | 765                |
| Gas, Oil, and Fuel         | 44,632             |
| Insurance                  | 42,137             |
| License, Permits, and Fees | 16,844             |
| Maintenance Labor          | 103,126            |
| Miscellaneous              | 712                |
| Parts and Supplies         | 104,771            |
| Rent                       | 31,555             |
| Highway Taxes              | 1,177              |
| Tires                      | 6,705              |
| Tools and Supplies         | 2,300              |
| Uniforms                   | 2,075              |
| Utilities                  | <u>4,544</u>       |
|                            | <u>\$1,166,458</u> |

(See Accountant's Compilation Report and  
Notes to Financial Statements)

JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
SCHEDULE II  
SUPPLEMENTAL SCHEDULE OF SELLING,  
GENERAL AND ADMINISTRATIVE EXPENSES  
FOR THE YEAR ENDED DECEMBER 31, 1994

|                          |                  |
|--------------------------|------------------|
| Office Salaries          | \$136,576        |
| Advertising              | 8,276            |
| Bad Debt Expense         | 22,060           |
| Contributions            | 390              |
| Dues & Subscriptions     | 1,477            |
| Group Insurance          | 85,041           |
| Legal and Professional   | 2,479            |
| Office Supplies          | 12,347           |
| Taxes                    |                  |
| Payroll                  | 65,584           |
| Franchise and other      | 3,779            |
| Telephone                | 8,564            |
| Travel and Entertainment | 183              |
| Penalties                | 2,020            |
| Other                    | <u>(1,252)</u>   |
|                          | <u>\$347,524</u> |

(See Accountant's Compilation Report and  
Notes to Financial Statements)



JOHN F. BUSHELMAN CONSTRUCTION COMPANY, INC.  
SCHEDULE III  
SUPPLEMENTAL SCHEDULE OF OTHER INCOME AND EXPENSE  
FOR THE YEAR ENDED DECEMBER 31, 1994

|                        |                 |
|------------------------|-----------------|
| Gain on sale of assets | \$ 1,050        |
| Miscellaneous          | <u>2,215</u>    |
|                        | <u>\$ 3,265</u> |

(See Accountant's Compilation Report and  
Notes to Financial Statements)

SECRETARY'S CERTIFICATE

The undersigned Secretary of John F. Bushelman Construction, Inc., an Ohio corporation, hereby certifies as follows:

1. She is the Secretary of John F. Bushelman Construction, Inc. ("Corporation"), a corporation duly organized and existing under the laws of the State of Ohio;

2. That attached hereto as Exhibits A, B and C are a true, correct and compared copies of the Resolutions duly adopted by the Shareholder and Director of the Corporation appointing the President and Secretary, authorizing the Purchase Agreement dated February 28, 1995 and changing the corporate name to JFB, Inc., and that said Resolutions are still in full force and effect;

3. That the Articles of Incorporation of the Corporation and Code of Regulations have not been further amended or revoked and that nothing contained in either the Articles or Code of Regulations prohibits or otherwise affects the within transaction;

4. That the Corporation is presently in good standing with the Secretary of State of Ohio and that all resolutions and authorizations required to complete the within transaction have been properly adopted and obtained.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of September, 1995.

JOHN F. BUSHELMAN CONSTRUCTION, INC.

By: Suzanne Romer, Secretary  
Suzanne Romer, Secretary

OFFICER'S CERTIFICATE

The undersigned, Tracy Ann Engel, President of John F. Bushelman Construction, Inc., hereby certifies as follows:

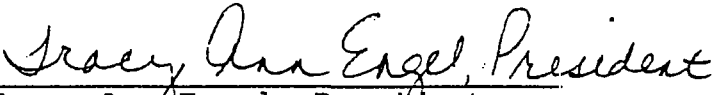
1. That the representations and warranties contained in Article V of the Purchase Agreement dated February 28, 1995 ("Agreement") between John F. Bushelman Construction, Inc. ("Seller") and Kossen, Inc. ("Purchaser") are true in all material respects as of this date and that such representations and warranties shall survive the closing;

2. Seller has performed and complied with all covenants and conditions required by the Agreement;

3. All actions, proceedings, instruments and documents delivered by Seller to carry out the Agreement or incidental thereto have been approved by counsel for Seller;

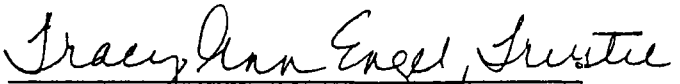
4. All Returns for all withholding taxes for the Corporation for all periods up through June 30, 1995 have been filed with the State of Ohio, Department of Taxation, and Internal Revenue Service and all taxes known to be due thereon have been paid in full.

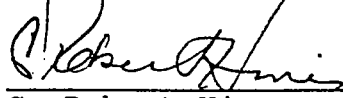
Executed this 5th day of September, 1995.

  
Tracy Ann Engel, President

ADDITIONAL CERTIFICATION

The above Certifications are accurate to the best of our knowledge as of this 5th day of September, 1995.

  
Tracy Ann Engel, Trustee  
U/A dated 4/4/95

  
G. Robert Hines  
Attorney for John F.  
Bushelman Construction, Inc.

JOINT ACTION OF  
THE BOARD OF DIRECTORS AND STOCKHOLDERS OF  
JOHN F. BUSHELMAN CONSTRUCTION, INC.  
WITHOUT A FORMAL MEETING

The undersigned, being all of the directors and stockholders of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, do hereby adopt the following corporate resolutions in writing, without a formal meeting, to be effective for all purposes as of the 5<sup>th</sup> day of September, 1995.

RESOLVED, that the Company shall complete the Agreement to Purchase Assets dated February 28, 1995 between John F. Bushelman Construction, Inc., as Seller, and Kossen, Inc., as Purchaser, as amended, by the execution and delivery of all documents required thereby to consummate the transaction including, but not limited to the Bill of Sale, Certificates of Title to the motor vehicles duly endorsed for transfer, a Covenant Not to Compete Agreement, a Lease Agreement with Kossen, Inc., an Assignment of Name transferring the trade name "Bushelman Construction Company" to Kossen, Inc., and any other ordinary and necessary documents required thereby, all in the name of the corporation and under its corporate seal.

RESOLVED, that Tracy Ann Engel, as President be, and she hereby is authorized and directed in the name of the corporation, on its behalf, and under its corporate seal, to execute and deliver all documents required to complete the Agreement to Purchase Assets dated February 28, 1995, including, but not limited to those documents authorized above.

RESOLVED, that Tracy Ann Engel, as President be, and she hereby is authorized and directed in the name of the corporation, on its behalf, and under its corporate seal, to execute a certain Environmental Remediation Agreement providing, among other things, that the corporation enter into certain environmental remediation of the property known as 11980 Runyan Drive, Sharonville, Hamilton County, Ohio, to remove those exceptions contained in the Phase II Environmental Audit performed by Environmental Enterprises, Inc., and to pay for such remediation required thereby out of the escrow provided for therein.

RESOLVED, that Tracy Ann Engel, as President be, and she hereby is authorized and directed in the name of the corporation, on its behalf, and under its corporate seal, to execute and deliver to C. Gregory Schmidt and G. Robert Hines, as Co-Escrow Agents a certain Mortgage on the corporate real estate known generally as 11980 Runyan Drive, Sharonville, Hamilton County, Ohio, being Auditor's Nos. 608-28-29, 31, 32, 33, 34, 35 and 36 as additional security for the performance of the Environmental Remediation Agreement to be held by the Co-Escrow Agents until the completion of such remediation work required thereby.

RESOLVED, that Tracy Ann Engel, as President be, and she hereby is authorized and directed in the name of the corporation, on its behalf, and under its corporate seal, to execute any and all other instruments and documents required, in her discretion, to complete and comply with the Agreement to Purchase Assets dated February 28, 1995 without further corporate resolution.

SOLE SHAREHOLDER:

The John F. Bushelman Trust  
U/A dated 4/4/95

SOLE DIRECTOR:

Suzanne Romer 9-5-95  
Suzanne Romer Date

BY: Tracy Ann Engel 9/5/95  
Tracy Ann Engel Date  
Trustee

JOINT ACTION OF  
THE BOARD OF DIRECTORS AND STOCKHOLDERS OF  
JOHN F. BUSHELMAN CONSTRUCTION, INC.  
WITHOUT A FORMAL MEETING

The undersigned, being all of the directors and stockholders of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, do hereby adopt the following corporate resolutions in writing, without a formal meeting, to be effective for all purposes as of the 5<sup>th</sup> day of Sept., 1995.

RESOLVED, that Article FIRST of the corporation's Articles of Incorporation be amended to read as follows:

FIRST: The name of the corporation shall be:

JFB, Inc.

RESOLVED FURTHER, that the President and Secretary of the corporation are hereby authorized and directed to take such action as may be necessary to file said amendment to the Articles of Incorporation with the Ohio Secretary of State.

SOLE SHAREHOLDER:

The John F. Bushelman Trust  
U/A dated 4/4/95

SOLE DIRECTOR:

Suzanne Romer  
Suzanne Romer

BY: Tracy Ann Engel Trustee  
Tracy Ann Engel  
Trustee

ACTION OF  
THE BOARD OF DIRECTORS OF  
JOHN F. BUSHELMAN CONSTRUCTION, INC.  
WITHOUT A FORMAL MEETING

The undersigned, being the sole director of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, does hereby adopt the following corporate resolutions in writing, without a formal meeting.

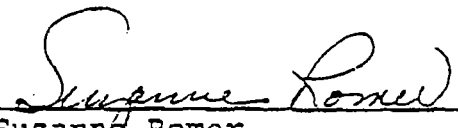
RESOLVED, that the following individuals be and they are hereby elected to serve as officers of the corporation in the capacity set forth opposite their respective names until the next annual meeting of the directors, or until their successors shall be elected and qualified:

President  
Secretary

Tracy Ann Engel  
Suzanne Romer

Effective as of the 5<sup>th</sup> day of Sept., 1995.

SOLE DIRECTOR:

  
Suzanne Romer

UNITED STATES OF AMERICA,  
STATE OF OHIO,  
OFFICE OF THE SECRETARY OF STATE.



*I, Bob Taft, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations and miscellaneous filings; that said records show JOHN F. BUSHELMAN CONSTRUCTION, INC., an Ohio Corporation, Charter No. 480736, principal location in Cincinnati, County of Hamilton, incorporated on April 27, 1976, is currently in GOOD STANDING upon the records of this office.*



*WITNESS my hand and official  
seal at Columbus, Ohio this  
31st day of August, A.D., 1995*

*Bob Taft*

Bob Taft  
Secretary of State



JOINT ACTION OF  
THE BOARD OF DIRECTORS AND STOCKHOLDERS OF  
JOHN F. BUSHELMAN CONSTRUCTION, INC.  
WITHOUT A FORMAL MEETING

The undersigned, being all of the directors and stockholders of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, do hereby adopt the following corporate resolutions in writing, without a formal meeting, to be effective for all purposes as of the 5th day of September, 1995.

RESOLVED, that the Company shall lend to Tracy Ann Engel, Trustee of the John F. Bushelman Trust under an Agreement dated April 4, 1995, the entire net distribution from the sale of all of the corporate assets of the Corporation to Kossen, Inc., the loan amount computed as follows:

|  |              |
|--|--------------|
| Net distribution from the sale of<br>the assets of John F. Bushelman<br>Construction, Inc. | \$200,000.00 |
|--|--------------|

|  |                 |
|--|-----------------|
| Add: Interest paid by Kossen, Inc. on<br>\$100,000.00 Note received by Trustee | <u>6,082.92</u> |
|--|-----------------|

|                                     |              |
|-------------------------------------|--------------|
| TOTAL DISTRIBUTION DUE CORPORATION: | \$206,082.92 |
|-------------------------------------|--------------|

Credits:

|  |          |
|--|----------|
| Less: Cash adjustment made by Kossen,<br>Inc. out of rent due Trustee for<br>equipment rental and bills paid prior<br>to closing | 6,654.08 |
|--|----------|

|   |           |
|---|-----------|
| Less: Amount due Trustee from Shareholder<br>loan made to JFB, Inc. | 16,509.31 |
|---|-----------|

|  |           |
|--|-----------|
| Less: Payoff of Fifth Third Notes paid<br>by Trustee | 13,675.42 |
|--|-----------|

|  |           |
|--|-----------|
| Less: Payoff of Valley Central Note<br>paid by Trustee | 51,048.80 |
|--|-----------|

|   |                 |
|---|-----------------|
| Less: Payment to S. Romer paid by Trustee | <u>1,964.00</u> |
|---|-----------------|

|  |              |
|--|--------------|
| NET PROCEEDS DUE JOHN F. BUSHELMAN, INC.<br>LOANED TO TRACY ANN ENGEL, TRUSTEE | \$116,231.31 |
|--|--------------|

RESOLVED, that the \$116,231.31 loan by the Corporation to the John F. Bushelman Trust shall be memorialized by a Demand Note and shall bear simple interest at a rate of 6% per annum, and shall be unsecured.

SOLE STOCKHOLDER:

SOLE DIRECTOR:

THE JOHN F. BUSHELMAN TRUST  
U/A/ DATED 4/4/95

By: Tracy Ann Engel, Trustee  
Tracy Ann Engel, Trustee

Tracy Ann Engel  
Tracy Ann Engel

DEMAND NOTE

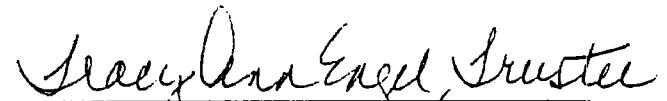
Principal Amount: \$116,231.31  
Interest Rate : 6%

Date: September 6, 1995  
Cincinnati, Ohio

FOR VALUE RECEIVED, the undersigned promises to pay to JOHN F. BUSHELMAN CONSTRUCTION, INC., or order, at its offices at 11980 Runyan Drive, Cincinnati, Ohio 45241, the sum of One Hundred Sixteen Thousand Two Hundred Thirty-one and 31/100 Dollars (\$116,231.31), and interest on the unpaid balance computed at a rate of six percent (6%) per annum. Interest will not be compounded and there shall be no prepayment penalty.

All interest under this Note shall be computed on a 360-day basis (interest for each day during which any of the Principal Amount is outstanding shall be computed at the Interest Rate divided by 360).

This Note is being executed and delivered in and shall be construed and enforceable in accordance with and governed by the laws of the State of Ohio.



TRACY ANN ENGEL, TRUSTEE  
of the John F. Bushelman Trust  
under an Agreement dated  
April 4, 1995

ACTION OF THE BOARD OF DIRECTORS  
OF JOHN F. BUSHELMAN CONSTRUCTION, INC.  
(TAKEN WITHOUT MEETING)

The undersigned, being all of the directors of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, do hereby adopt the following resolutions in writing, without meeting, to be effective for all purposes as of the 6th day of September, 1995.

(1) RESOLVED, that the corporation shall enter into an agreement with Tracy Ann Engel, Trustee under a Trust Agreement dated April 4, 1995, as owner of the property known as 11980 Runyan Drive, Sharonville, Hamilton County, Ohio, wherein the corporation agrees that it will reimburse her for all required environmental remediation work which must be performed in accordance with an environmental audit of the property conducted by Environmental Enterprises, Inc., which has identified certain environmental deficiencies on the property caused by or occurring while the corporation was the sole and exclusive lessee.

(2) RESOLVED, that the liability incurred by the corporation hereby, as memorialized by the agreement for environmental remediation work with the owner, shall be paid by contemporaneous credit to the Trustee for any amounts owed the Trustee under a certain Demand Note from the Trustee to the corporation of even date.

SOLE DIRECTOR

The John F. Bushelman Trust  
U/A Dated 4/4/95

By: Tracy Ann Engel, Director  
Tracy Ann Engel

ESCROW AGREEMENT FOR ENVIRONMENTAL REMEDIATION WORK

This Agreement is made and entered into as of the 6th day of September, 1995 by and between Tracy Ann Engel, Trustee under a Trust Agreement executed by John F. Bushelman dated April 4, 1995 (hereinafter called "Owner") and John F. Bushelman Construction, Inc., an Ohio corporation (hereinafter called "Obligor"), with regard to the real estate known and numbered as 11980 Runyan Drive, Sharonville, Hamilton County, Ohio, known as Auditor's Nos. 608-28-29, 31, 32, 33, 34, 35 and 36, more particularly described on the attached Exhibit A (hereinafter called "Property").

W I T N E S S E T H

WHEREAS, Owner and Obligor were parties to a certain Agreement to Purchase Assets dated February 28, 1995 (hereinafter called "Purchase Agreement") whereby Owner and Obligor had agreed to sell certain assets to Kossen, Inc. and lease the Property to Kossen, Inc. under the terms of a certain Lease Agreement executed by Owner and Kossen, Inc. prior hereto (hereafter called "Lease Agreement"); and

WHEREAS, The Purchase Agreement contained certain environmental contingencies which provided that Kossen, Inc. was not required to complete the transaction if not satisfied with the environmental condition of the subject property; and

WHEREAS, a Phase I and Phase II environmental audit of the Property have been conducted by Environmental Enterprises, Inc. which have identified certain environmental deficiencies on the Property (collectively known as the "Environmental Reports"); and

WHEREAS, the Environmental Reports have recommended certain remediation work be completed on the Property; and

WHEREAS, in order to induce Owner to enter into that certain Lease Agreement with Kossen, Inc. and to complete the closing of the transaction, Obligor has agreed to be ultimately responsible for the end costs of the certain post-closing environmental remediation of the Property that are incurred by Owner under a certain Environmental Remediation Agreement executed by Owner and Kossen, Inc.

NOW, THEREFORE, the parties agree as follow:

1. The Environmental Reports are incorporated herein by reference.

2. Owner shall remediate and correct the environmental condition of the Property (including certain personal property located thereon) as set forth in the Environmental Remediation Agreement at her initial cost and expense.

3. Obligor agrees that the ultimate responsibility for the environmental deficiencies on the Property belong to Obligor, since Obligor exclusively occupied the Property since January 1, 1989 under a lease arrangement, during which time certain deficiencies were created or allowed to exist.

4. Because Obligor has very little liquidity, Owner shall initially advance the cost of all environmental remediation out of an Environmental Remediation Escrow funded with monies belonging to Owner. As Owner incurs these remediation costs, Owner shall be given immediate credit under the certain Demand Note due the Obligor from the Owner in the face amount of \$116,231.31. Similar credits will be taken for each expenditure made by the Owner to pay for the environmental remediation work.

5. Upon Owner confirming the completion of all of the required environmental remediation work according to the Environmental Remediation Agreement, Owner shall notify Obligor and the parties shall thereupon agree to a full accounting of the amounts then due under the Demand Note. In the event that the expenditure by the Owner to complete all required environmental remediation work exceeds the amount due under the Demand Note, then Obligor shall execute a sufficient release evidencing the payment of the Demand Note in full by Owner.

6. This Agreement is made for the purpose of indemnifying and holding Owner harmless from that liability incurred by her in both the Environmental Remediation Agreement and the Escrow Agreement for Environmental Remediation Work executed for the benefit of Kossen, Inc.

OWNER:

Tracy Ann Engel, Trustee  
Tracy Ann Engel, Trustee

OBLIGOR:

John F. Bushelman  
Construction, Inc.

By: Tracy Ann Engel, President  
Tracy Ann Engel, President

ACTION OF  
THE BOARD OF DIRECTORS OF  
JOHN F. BUSHELMAN CONSTRUCTION, INC.  
WITHOUT A FORMAL MEETING

The undersigned, being the sole director of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, does hereby adopt the following corporate resolutions in writing, without a formal meeting.

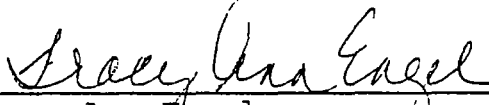
RESOLVED, that the following individuals be and they are hereby elected to serve as officers of the corporation in the capacity set forth opposite their respective names until the next annual meeting of the directors, or until their successors shall be elected and qualified:

President  
Secretary

Tracy Ann Engel  
Tracy Ann Engel

Effective as of the 1st day of November, 1995.

SOLE DIRECTOR:

  
\_\_\_\_\_  
Tracy Ann Engel

ACTION OF SHAREHOLDERS  
OF JOHN F. BUSHELMAN CONSTRUCTION, INC.  
(TAKEN WITHOUT MEETING)

The undersigned, being all of the stockholders of John F. Bushelman Construction, Inc., in accordance with Section 1701.54 of the Ohio Revised Code, do hereby adopt the following resolution in writing, without meeting, to be effective for all purposes as of the 6th day of September, 1995.

RESOLVED, that Tracy Ann Engel be and she hereby is appointed the sole Director of the corporation to replace Suzanne Romer, to serve until further notice.

SOLE STOCKHOLDER

The John F. Bushelman Trust  
U/A Dated 4/4/95

By: Tracy Ann Engel, Trustee  
Tracy Ann Engel, Trustee